

1 to this idea some time before that date?

2 A Yes.

3 Q Mr. Sobel, please turn to page two, paragraph  
4 three of the agreement. Do you see there is a reference to  
5 the value of your business being \$200,000.00?

6 A That was a base price for starting the  
7 consideration of the agreement. Yes.

8 Q How was that \$200,000.00 figure reached?

9 A At the time, it was my estimate of gross revenues  
10 times three years for all my stations. There was one  
11 exclusion. I owned one license. One license was really  
12 valuable, and my wife would be capable of continuing its  
13 existence. It was excluded. It was not a managed station.

14 Q This is one of the 450 or 470 megahertz stations?

15 A Yes.

16 Q As a matter of fact, that is call sign WIK 657, as  
17 referred up above towards the top of page two of the  
18 agreement?

19 A Yes.

20 Q In calculating the \$200,000.00, the three times  
21 gross revenue, did you include the gross revenue for  
22 Management Agreement stations?

23 A They weren't making any money at that time, so no,  
24 I did not.

25 Q I would like to direct your attention back to WTB

1 Exhibit 31. Under line one, it says that your gross  
2 receipts or sales for 1994 were about \$169,000.00. Correct?

3 A Correct.

4 Q If you accept the figure of three times gross  
5 revenues, wasn't your business worth considerably more than  
6 \$200,000.00?

7 A No, I think it specified repeater revenues. Sales  
8 and services not to be included.

9 Q You testified earlier that one of the Management  
10 Agreement stations was sold for somewhere around \$70,000.00  
11 to \$90,000.00. Correct?

12 A Yes.

13 Q At the time it was sold, what was that station's  
14 gross monthly revenue?

15 A I don't remember.

16 Q Would it have been less than \$600.00?

17 A No, I think it was more. I don't remember.

18 Q Do you have any idea how much more?

19 A I just don't remember.

20 Q Now, would it be correct that \$600.00 times 12  
21 months would be an annual revenue of \$7,200.00. Correct?

22 A If your math is correct, sure.

23 Q Times three years would be \$21,600.00?

24 A Yes.

25 Q So it would be correct to say that these stations

1 could be worth a lot more than three times gross revenue?

2 A \$600.00 covers cost. It's not profit. I didn't  
3 consider the \$600.00 as part of my repeater service thing  
4 when the other contract was written.

5 Q But talking in terms of the value of the other  
6 stations, in Exhibit 47 you used the valuation three times  
7 gross revenues, right? Not gross profits, correct?

8 A Yes.

9 Q Mr. Sobel, please direct your attention to WTB  
10 Exhibit 41. Is that our signature on the document?

11 A Yes.

12 Q Now, James Kay first brought this document to your  
13 attention. Correct?

14 A Yes.

15 Q This was in a face to face meeting?

16 A I believe so.

17 Q Mr. Kay showed you this document and asked if you  
18 would sign it?

19 A Yes.

20 Q Mr. Sobel, please turn to WTB Exhibit 43. Is that  
21 your signature on the document?

22 A Yes.

23 Q Except for the handwritten date on the two  
24 documents, is it correct that these two documents are  
25 identical?

1 A Yes.

2 Q Now, is it correct that you signed WTB Exhibit 43  
3 because the first affidavit was filed incorrectly with the  
4 FCC the first time?

5 A That's what I was told, yes.

6 Q Now, turning back to Exhibit 41, you read this  
7 document and signed it without making any changes to the  
8 document. Correct?

9 A Yes.

10 Q You understood that you could have added anything  
11 you wanted to this affidavit. Correct?

12 A Sure.

13 Q At this meeting, do you recall anything about what  
14 James Kay told you at this meeting where he presented to you  
15 the affidavit?

16 A Basically, he told me that it was for some stuff  
17 that he was filing with the Commission regarding the other  
18 mess that he was in, and that was pretty much it.

19 Q James Kay had told you that your licenses had been  
20 designated for hearing along with his licenses. Correct?

21 A Yes. I have a copy of it.

22 MR. KELLER: Just for the record, I do not believe  
23 that is a correct characterization of the designation,  
24 however.

25 MR. SCHAUBLE: At least some of his licenses were

1 designated for hearing.

2 MR. KELLER: I am quibbling with the term  
3 designated for hearing. Some of his licenses were mentioned  
4 in the designation, but that it is a whole separate issue,  
5 so I think the record will speak for itself. I just want to  
6 be clear here that there is a distinction in terminology  
7 there, I think.

8 Mr. Sobel is not formally named in the  
9 designation.

10 MR. SCHAUBLE: Named a party, but certain of his  
11 licenses were mentioned in the designation.

12 MR. KELLER: They were only listed as bering Kay  
13 licenses in the designation.

14 BY MR. SCHAUBLE:

15 Q Now, Mr. Sobel, you understood that the purpose of  
16 this affidavit would be used in an attempt to get your  
17 licenses out of the Kay hearing?

18 A It was going to happen anyway. They had a royal  
19 screw up. It was like giving me a parking ticket for his  
20 car. They thought I was a ghost. They named me as an a/k/a  
21 of James Kay. The order was against him. They can't take  
22 my licenses away when they try to prosecute him. It doesn't  
23 work. So, it was going to get separated eventually anyway.

24 Q But you understood that this affidavit would be  
25 used to try and move that process along so your licenses

1 would get taken out of that hearing. Correct?

2 A I kind of had to raise my hand and say, "Yeah, I'm  
3 a person here." The application stated in the very first  
4 line, "I am individual, entirely separate." I am not James  
5 Kay. The purpose was to establish to the Bureau that I am  
6 not an a/k/a of Mr. Kay. I am a real living person and they  
7 screwed up.

8 Q Now, you knew that the Judge would want to know  
9 what the actual relationship was between you and Mr. Kay.  
10 Correct?

11 A No. I don't think that was the issue.

12 Q It never occurred to you that the Commission might  
13 want to know what the actual relationship was between you  
14 and Mr. Kay?

15 A Yes, eventually. No doubt. But as far as the  
16 Judge goes, in separating our issues, that wasn't necessary.  
17 This was all an attempt to correct a screw up by the Bureau.

18 Q Let me direct your attention to the third sentence  
19 of the affidavit, Mr. Sobel. It states Mr. Kay has no  
20 interested radio station or license of which I am the  
21 licensee.

22 A Correct.

23 Q Do you see that?

24 A Yes.

25 Q Let's review here, Mr. Sobel. Mr. Kay found these

1 frequencies for you to apply for?

2 A I asked him to, yes.

3 Q He prepared the applications?

4 A Most of them.

5 Q He provided the equipment and the money needed to  
6 build the stations?

7 A That was our deal.

8 Q His personnel performed services with respect to  
9 these stations?

10 A That was part of our deal.

11 Q The work you do on the stations, you do as a  
12 contractor for him. Correct?

13 A Yes. It was part of our deal.

14 Q He is the one who sells the stations?

15 A If he wants to, or if I agree to do it, yes.

16 Q He pays all the expenses relating to the stations?

17 A That's why he got \$600.00. Yes.

18 Q The operating revenue from these stations go  
19 directly in his bank account?

20 A The first \$600.00 do, yes.

21 Q As a matter of fact, the only money you have  
22 received from these stations is the money you received for  
23 working as a contractor and the money you received in  
24 connection with the sale of the stations. Correct?

25 A Yes.

1 Q Mr. Kay can buy these stations any time he wants  
2 for \$500.00 each. Correct?

3 A Yes.

4 Q He is obligated to buy these stations if you die.  
5 Correct?

6 A He could, yes.

7 Q Mr. Sobel, in light of these facts, how can it  
8 possibly be truthful for you to say he has no interest in  
9 these stations?

10 MR. KELLER: Your Honor, I don't think we need to  
11 argue with the witness. If he has a question, that is more  
12 an argument than a question.

13 JUDGE FRYSIK: Are we quibbling about the meaning  
14 of the word interest?

15 MR. KELLER: If he wants to ask him what he  
16 interprets the word to mean, fine, but if he wants to argue  
17 with him about why he used the word, or how he could  
18 possibly mean it, I don't think the form of the question is  
19 proper.

20 MR. SCHAUBLE: Your Honor, I think it is a fair  
21 question in light of the facts here. Why does this witness  
22 believe that the statement is a true and correct statement?

23 MR. KELLER: I have no problem with that version  
24 of the question.

25 JUDGE FRYSIK: The question is kind of clear.



1 What do you mean by Mr. Kay not having any interest? You  
2 can see this affidavit, and you say that he has no interest.  
3 What did you mean by that?

4 THE WITNESS: The station license was issued to  
5 myself. It wasn't issued to him. It wasn't issued to a  
6 partnership. There is no partnership agreement between us.  
7 The context in which I said the word interest was an  
8 ownership interest in the license, not necessarily in  
9 ownership of the equipment or whether he would or would not  
10 make any money from the station. It was very strictly  
11 regarding, in this affidavit, and in the context this  
12 affidavit, said he was not on it.

13 The Commission's request, the Commission's  
14 designation order, made an assumption that Kay and I were --  
15 or I was an a/k/a and a ghost -- so, as far as that goes, I  
16 want to set the record clear that his name does not appear  
17 on the license, we are not a partnership, he had no interest  
18 in this station, or in the license itself. The license is  
19 in my name, my address, my phone number, and he was not the  
20 licensee. That's the context in which the word interest was  
21 used.

22 BY MR. SCHAUBLE:

23 Q Mr. Sobel, you did not say here that Mr. Kay has  
24 no ownership interest in any radio station license of which  
25 I am the licensee. Correct?

1           A     No, I said I'm not a stockholder or shareholder in  
2     any corporations in which Mr. Kay holds interest. There is  
3     no back door arrangement where you could say that one  
4     corporation that holds the license is really a  
5     subcorporation, so I made it pretty clear that this is  
6     regarding the ownership of the license. My name is Marc  
7     Sobel, it is not Marc Sobel Company, which Mr. Kay has an  
8     ownership or share in Marc Sobel Company.

9           Q     As a matter of fact, you said here that Mr. Kay  
10    did not have any type of interest whatsoever in your  
11    stations or licenses. Correct?

12          A     No, again, the word interest is related to the  
13    ownership of the license.

14          Q     As a matter of fact here, you said he has no  
15    interest in any radio station or license. Correct?

16          A     I believe when we in the business talk about the  
17    radio station license, it is the license. It is the piece  
18    of paper issued by the FCC which gives you the authority to  
19    operate. In fact, I have control over the equipment. So if  
20    you want to get off on that tangent, he leased me the  
21    equipment per the Management Agreement.

22          Q     In fact, he owned the equipment. Correct?

23          A     But he rented it to me. I pay him for it, so he  
24    didn't have interest in it. The issue here is that the  
25    radio station license is mine, not his. He had no part of

1 it. That's what the context of this affidavit was.

2 Q Isn't his receipt of the monies and revenues from  
3 these stations a financial interest in your stations?

4 A A different interest, yes, but not in the context  
5 which I signed this affidavit. I didn't say he didn't have  
6 any relationship with me.

7 Q Wasn't his right to buy these stations at any time  
8 for \$500.00 an interest in these stations?

9 A Whatever happens in the future, I don't know.

10 Q But you knew he had that right, correct?

11 A What if he died? Then he couldn't exercise his  
12 future options. I don't know. I don't consider something  
13 that hasn't happened interest.

14 Q Mr. Sobel, what does it mean to be an owner in the  
15 context in which you are using the term ownership interest?

16 A Possession of.

17 JUDGE FRYSIK: What was that?

18 THE WITNESS: I'm sorry. Possession of. That you  
19 had the ability to change or control whatever it is that you  
20 owned.

21 BY MR. SCHAUBLE:

22 Q Doesn't an owner normally have the right to decide  
23 when a business is going to be sold?

24 A Usually, yes.

25 Q But in fact, you did not have that right with

1     respect to these stations.  Correct?

2             A     Yes.  I have to say that the Commission did grant  
3     that right, and it didn't happen.  These are all subject to  
4     a Commission authorization.

5             I want to clarify.  When you say the right when  
6     the equipment is sold.  I can own my car, by terms of a  
7     lease, but within a lease I agree to give it back to them.  
8     I don't know if that is truly a correct way of stating  
9     ownership.  I think there can be ownership and control of  
10    ownership, two different things.

11            Q     Are you saying with respect to, when you use the  
12    word interest, you are only referring to ownership as  
13    opposed to control?

14            A     No, I have control over it.

15            JUDGE FRYSIK:  Well, answer the question.  Do you  
16    mean legal ownership like a deed type arrangement, or do you  
17    mean something else?

18            THE WITNESS:  Could you ask me that question  
19    again?

20            JUDGE FRYSIK:  Repeat your question.

21            MR. SCHAUBLE:  Certainly.

22            BY MR. SCHAUBLE:

23            Q     When you are using the word interest, are you  
24    referring solely to ownership or are you also referring to  
25    control?

1           A     I think it's both. I have control and ownership  
2 of a station, and as far as a deed goes, Your Honor, the FCC  
3 gave me a piece of paper which could be considered a deed.  
4 It had my name on it, not Mr. Kay's.

5           Q     Mr. Sobel, would you agree that Mr. Kay has a  
6 direct financial stake in the Management Agreement stations?

7           A     Yes.

8           Q     Didn't Mr. Kay tell you in January, 1995, that a  
9 direct financial stake is an interest in the business?

10          A     No, I don't think so.

11          Q     Mr. Sobel, turn to the fifth sentence of this  
12 affidavit. Specifically, the words, "I am not an employer  
13 or employee of Mr. Kay." Do you see that, sir?

14          A     Yes.

15          Q     As you have testified previously, you do all sorts  
16 of work for Mr. Kay for an hourly fee. Correct?

17          A     I am a contractor. He pays me as a consultant to  
18 do work for him, and he pays me as another radio shop to do  
19 work for him also.

20          Q     You did nothing in this affidavit to describe the  
21 sort of work you did for Mr. Kay. Correct?

22          A     There wasn't appropriate subject material for what  
23 this affidavit was submitted for.

24          Q     Isn't it deceptive to tell the Commission you  
25 weren't Mr. Kay's employee without clarifying that you did

1 all his work for him, albeit as a contractor?

2 A I didn't use any deception at all. The fact is, I  
3 am not his employee.

4 Q Wasn't it a relevant fact in the Commission's  
5 determination what the relationship between you and Mr. Kay  
6 actually was?

7 A Not for the purpose of this affidavit. Remember,  
8 this affidavit was to tell them that I was a separate  
9 person. Going back to the same issue I spoke before about,  
10 they thought I was a ghost and a/k/a.

11 JUDGE FRYSIK: Excuse me. The affidavit is  
12 attached to what document?

13 MR. SCHAUBLE: Exhibit 42, Your Honor.

14 JUDGE FRYSIK: You may continue.

15 BY MR. SCHAUBLE:

16 Q You knew that the Commission might want to know  
17 what your relationship with Mr. Kay was, correct?

18 A Sure. I expected them to fully investigate it.

19 Q Going on in that sentence, Mr. Sobel, your  
20 statement that, "I am not a partner with Mr. Kay in any  
21 enterprise." Do you see that?

22 A Yes.

23 Q You had an agreement with Mr. Kay under which  
24 revenues and profits of the stations were split. Correct?

25 A Yes.

1 Q Why wasn't this a partnership?

2 A You can agree to split something without becoming  
3 a partnership.

4 JUDGE FRYSIK: Answer the question. Did you  
5 consider it a partnership?

6 THE WITNESS: No. I did not consider it a  
7 partnership.

8 BY MR. SCHAUBLE:

9 Q Why didn't you consider it a partnership?

10 A We don't file taxes together, we're not liable to  
11 each other for things, we can't tell each other what to do  
12 and what not to do like a partnership would have certain  
13 grounds of operating together. We just weren't a  
14 partnership. I had my own business, and he had his  
15 business.

16 Q Now, turning to the second sentence of this  
17 affidavit, Mr. Sobel, which reads, "Mr. Kay does not do  
18 business in my name, and I do not do business in his name."  
19 Do you see that?

20 A Yes.

21 Q The Management Agreement stations were licensed in  
22 your name. Correct?

23 A Yes.

24 Q Those stations are marketed in Mr. Kay's name, or  
25 names he does business under. Correct?

1 A Yes.

2 Q Why wasn't it deceptive not to say here that he  
3 was doing business for these stations on his name.

4 A You have to understand our industry. I did a deal  
5 with him to resell capacity on my stations. That entity,  
6 that entity called Lucky's Two-Way Radio was a business, and  
7 whether or not he brokered or put the end users or mobile  
8 radios out there on his stations, on someone else's  
9 stations, or my stations, that was his deal. It was his  
10 business.

11 If he put them on my stations, that was under a  
12 separate agreement between him and I as a business. He  
13 didn't do business in my name. He did business in his name.

14 Q Now, Mr. Sobel, does a reseller normally have the  
15 right to purchase a station for a nominal fee?

16 A I've seen it before in example contracts. Option  
17 deals are done in this industry.

18 Q Wasn't Mr. Kay, in fact, much more than just a  
19 reseller of these stations?

20 A The primary business here was to resell spectrum  
21 space, capacity. That was the whole purpose of putting up a  
22 repeater. I would say yes, we did other things, but it was  
23 to support a repeater so the capacity could be sold. You  
24 don't make money unless you sell the system to other people.

25 Q Turn to the sentence, Mr. Sobel that says, "I am



1 not related to Mr. Kay in any way by birth or marriage." Do  
2 you see that sir?

3 A Yes.

4 Q Why was that statement placed in the affidavit?

5 A Well, I think it was -- you get into well, we're  
6 not husband and wife, but you get into law that says that  
7 common law and stuff like that -- I was just trying to make  
8 it clear that we were two separate people. We weren't  
9 uncles or nephews or anything, just to provide a non-  
10 relative relationship. That's what that statement was.  
11 Again, the Commission was thinking that he was doing  
12 business as me, that I was an a/k/a of his. This was all  
13 back to that original idea that I am a separate living  
14 person.

15 JUDGE FRYSIK: Let me ask a question.

16 Mr. Sobel, what were the circumstances under which  
17 you composed this affidavit?

18 THE WITNESS: I didn't compose it. Brown and  
19 Schwaninger, the attorneys --

20 JUDGE FRYSIK: What were the circumstances in  
21 connection with you being asked to sign this affidavit  
22 composed by the attorney?

23 THE WITNESS: It was in relationship to the  
24 proceeding, Mr. Kay's proceeding, that they were to separate  
25 my name from the proceeding because the Bureau had goofed up

1 and included me as an a/k/a. To show that there is no such  
2 thing as James Kay, a/k/a Marc Sobel.

3 JUDGE FRYSIK: Is that what you were told?

4 THE WITNESS: That's what I understood, yes. I  
5 read the hearing designation order too, so I realized they  
6 messed up too. I couldn't see how it would be fair that  
7 they would take him to task in a hearing or a legal  
8 proceeding with my licenses. It didn't make any sense, so  
9 the Bureau clearly had made a mistake, and at some point in  
10 time, we would have to be separated. Assuming that I did  
11 not exist, maybe the Bureau's designation would have been  
12 correct, but I do exist so it wasn't correct.

13 This is what the affidavit was all about.

14 BY MR. SCHAUBLE:

15 Q Don't you think, Mr. Sobel, the Commission would  
16 have wanted to know about the Management Agreement at this  
17 time?

18 A I thought they probably already knew about it. I  
19 don't remember --

20 JUDGE FRYSIK: Are you now saying that you  
21 thought about adding something or not adding something to  
22 this affidavit?

23 THE WITNESS: Oh, no. What it says was true and  
24 correct. I didn't really think about it too much.

25 JUDGE FRYSIK: You didn't think anything about

1 this affidavit except to sign it.

2 THE WITNESS: No, it was correct. It made sense.  
3 It said what it said, and I was satisfied with what it said,  
4 and signed it. I don't sign things that are blank.

5 JUDGE FRYSIK: You already said that you filed  
6 that information -- what was it you said that you thought  
7 that they --

8 MR. SCHAUBLE: That the Commission would want to  
9 know about the relationship between him and Mr. Kay.

10 MR. KELLER: No, that was your question.

11 THE WITNESS: Yes, I believed that they would, but  
12 I don't think this was the forum to do it. This went to the  
13 Judge who handled the hearing designation order. This  
14 didn't go to the Commission. It was addressed to the Court  
15 versus the Commission. I don't think it related to --

16 JUDGE FRYSIK: You seem to be making judgements  
17 about this affidavit now, and you seem to want me to believe  
18 that you did not make the same judgements at the time you  
19 signed this affidavit. I have trouble relating to the two  
20 time periods. I can understand you saying something today,  
21 what I want to know is what you thought at the time you  
22 signed this affidavit.

23 THE WITNESS: The word interest -- I thought about  
24 the word interest, because it was the only thing that in  
25 here might have been questionable, but it was in regards to

1 the license and I didn't give it a lot more thought, to be  
2 honest with you. But, now we have to pick this thing apart  
3 so I am trying to explain myself.

4 JUDGE FRYSIK: I understand.

5 You may continue.

6 BY MR. SCHAUBLE:

7 Q But again, Mr. Sobel, the language in the  
8 affidavit said that, "Mr. Kay has no interest in the radio  
9 station or license in which I am the licensee." Correct?

10 A That's what it says.

11 Q Mr. Sobel, I would like to direct your attention  
12 to WTB Exhibit 46. On the second page, Mr. Sobel, is that  
13 your signature?

14 A Yes.

15 Q Now, in the last paragraph on the first page,  
16 please turn your attention there. Do you see there's a  
17 statement there that, "I would like to assure you that I am  
18 an independent two-way radio dealer." Do you see that?

19 A Yes.

20 Q As a matter of fact, the word independent is  
21 underlined?

22 A Yes.

23 Q Now, in fact, Mr. Sobel, with respect to the  
24 Management Agreement stations, you weren't independent of  
25 Mr. Kay. Were you?

1 A Sure, I was.

2 Q How could you be independent with respect to the  
3 Management Agreement stations when the work you were doing  
4 for those stations, you were doing as a contractor to Mr.  
5 Kay?

6 A It says that I am an independent two-way radio  
7 dealer. That's what I am. I sell equipment, I fix  
8 equipment, I provide service to others, I provide service to  
9 others through others, not only Mr. Kay, but other people.  
10 I am independent.

11 JUDGE FRYSIK: Did you compose this letter?

12 THE WITNESS: Yes.

13 JUDGE FRYSIK: You composed it?

14 THE WITNESS: Yes. This is why this started my  
15 eye opening to see that the Commission was lumping me  
16 together with Mr. Kay.

17 BY MR. SCHAUBLE:

18 Q Do you believe you are independent of Mr. Kay with  
19 respect to the Management Agreement stations?

20 A Sure.

21 Q Despite the fact that you cannot sell those  
22 stations without Mr. Kay's permission?

23 A I'm still independent of him.

24 Q Despite the fact that Mr. Kay is getting all the  
25 operating revenue from these stations?

1           A     I made a deal with him, but that does not make us  
2 dependent on each other. I am an independent radio dealer.

3           Q     In fact, you have not invested, advanced, or  
4 contributed any money to the construction or operation of  
5 these stations. Correct?

6           A     I invested my time in these stations. Yes, I got  
7 paid some money for it, but I did not get paid what I  
8 normally charge people, so therefore, I did invest time  
9 without being paid for it.

10          Q     Now, when you work on the Management Agreement  
11 stations, you are compensated at the same rate that Mr. Kay  
12 compensates you for working on his own stations. Correct?

13          A     Yes. Which is a substantially discounted rate  
14 from what I charge other customers. I invested my time and  
15 the discount.

16          Q     Now, there is nothing in Exhibits 41, 41 being the  
17 January 11 affidavit, or Exhibit 43, which is the January 24  
18 affidavit, or Exhibit 46, which is your December 6, 1994  
19 letter that accurately and completely describes your  
20 relationship with Mr. Kay, is there?

21          A     We made several attempts to talk to the Commission  
22 about it in detail, but they ignored our requests.

23          Q     Not in this time period? This is late 1994, early  
24 1995.

25          A     Probably not.

1 MR. SCHAUBLE: One moment, Your Honor. No further  
2 questions at this time, Your Honor.

3 JUDGE FRYSIK: All right. Let's take a short  
4 recess.

5 MR. KELLER: How long?

6 JUDGE FRYSIK: Five minutes.

7 (Whereupon, a short recess was taken.)

8 JUDGE FRYSIK: All right. We are back on the  
9 record. I think I failed to mention that I quit at 4:00. I  
10 hope that doesn't give anybody any problems.

11 MR. KELLER: All right. I doubt we will get  
12 through with Mr. Sobel by then, but I guess we can just go  
13 as far as we can get.

14 MR. SCHAUBLE: Your Honor, one question. What  
15 time do you propose to resume tomorrow morning?

16 JUDGE FRYSIK: I was thinking about 9:30. Is  
17 that all right? Let's ask the court reporter. We can start  
18 at 9:30?

19 MR. SCHAUBLE: Your Honor, Mr. Kellet comes in  
20 from Gettysburg. I think if we started at 10:00 tomorrow,  
21 we could probably finish. Would it be a problem starting at  
22 10:00?

23 MR. KELLER: No problem here.

24 JUDGE FRYSIK: No problem? All right, we will  
25 start at 10:00.

1 Mr. Sobel, back on the stand.

2 CROSS EXAMINATION

3 BY MR. KELLER:

4 Q Mr. Sobel, I want to sort of go in reverse order.  
5 First, I want to pick up on one thing we were talking about  
6 just before the break. Going back to the affidavits, which  
7 are Bureau Exhibit numbers 43 and 41, you testified you did  
8 not draft these affidavits. Is that correct?

9 A Yes.

10 JUDGE FRYSIK: What was the question?

11 MR. KELLER: He did not draft the affidavits.

12 BY MR. KELLER:

13 Q Did you edit them in any way?

14 A No.

15 Q So, they were presented to you and you read them?

16 A Yes.

17 Q Was there anything in the affidavit, or is there  
18 anything in the affidavit that at the time you wrote it, you  
19 considered to be untruthful or inaccurate?

20 A No.

21 Q Is there anything reading it today that you  
22 consider to be untruthful or inaccurate?

23 A No.

24 Q Did you review the pleading to which this  
25 affidavit was attached?



1 A No.

2 MR. SCHAUBLE: For the record, could we clarify  
3 the --

4 MR. KELLER: The Bureau has also introduced, or  
5 there is in the record, Exhibit 42, which is document number  
6 94-147, the matter of James A. Kay, a motion to enlarge,  
7 change, or delete issues. It bears a receipt stamp having  
8 been filed with the Office of the Secretary, January 12,  
9 1995.

10 BY MR. KELLER:

11 Q Had you seen this document or were you aware of  
12 this document at the time you signed the affidavit?

13 A I was aware that they had prepared something, but  
14 I had not seen it.

15 Q You had not reviewed the document or the substance  
16 of it?

17 A No.

18 Q Let me direct your attention to page eight of that  
19 document. Do you see that middle paragraph there that  
20 begins with the words, section 90.313(a), "Establishes a --

21 A I'm sorry.

22 Q You didn't consider that at all when you signed  
23 the affidavit, did you?

24 A Where is it?

25 Q Page eight of Exhibit 42. Did you consider that